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HOUSE BILL 952

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Daniel R. Foley

AN ACT

RELATING TO HORSE RACING; REQUIRING PERSONS LICENSED TO CONDUCT HORSE RACE MEETS TO BE NEW MEXICO RESIDENTS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-1-6 NMSA 1978 (being Laws 1973, Chapter 323, Section 4, as amended) is amended to read:

"60-1-6. QUALIFICATIONS FOR LICENSE TO CONDUCT A HORSE RACE MEET. --

A. A license to conduct a horse ~~[raeing]~~ race meet in this state may be issued by the state racing commission to ~~[any person whom the commission determines]~~ a person who is a New Mexico resident and is determined by the commission to be a qualified applicant. ~~[Such]~~ Qualification shall be decided by the commission after due consideration for the proper

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1 protection of the public health, safety, morals and good order  
2 and the general welfare of the inhabitants of the state. The  
3 burden of proving his qualifications to receive and hold a  
4 license to conduct a horse ~~[racing]~~ race meet shall be at all  
5 times on the applicant or licensee. The state racing  
6 commission ~~may~~ establish by regulation such qualifications for  
7 licenses to conduct horse race meets as it deems to be in the  
8 public interest.

9 B. Without limiting the power of the state racing  
10 commission to adopt by regulation additional qualifications  
11 pursuant to Subsection A of this section, ~~[no]~~ a person ~~[shall~~  
12 ~~be]~~ is not qualified to be licensed under this section if he:

13 (1) has been convicted of a felony under the  
14 laws of New Mexico, the laws of any other state or the laws of  
15 the United States, unless sufficient evidence of rehabilitation  
16 has been presented to the ~~[racing]~~ commission; however, the  
17 provisions of this paragraph shall not apply to ~~[any]~~ a person  
18 who ~~[has been]~~ was convicted of a felony prior to June 1, 1977,  
19 with respect to ~~[such]~~ that prior conviction, if with knowledge  
20 of the conviction the ~~[state racing]~~ commission, ~~[has as of]~~ by  
21 June 1, 1977, granted him a license to conduct a horse race  
22 meet;

23 (2) has been guilty of or attempted any fraud  
24 or misrepresentation in connection with racing, breeding or  
25 otherwise, unless sufficient proof of rehabilitation has been

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1 presented to the [~~raci~~ng] commission;

2 (3) has violated or attempted to violate any  
3 law or regulation with respect to racing in any jurisdiction,  
4 unless sufficient proof of rehabilitation has been presented to  
5 the [~~raci~~ng] commission;

6 (4) has consorted or associated with  
7 bookmakers, touts or persons of similar pursuits, unless  
8 sufficient proof of rehabilitation has been presented to the  
9 [~~raci~~ng] commission;

10 (5) is consorting or associating with  
11 bookmakers, touts or persons of similar pursuits;

12 (6) is financially irresponsible; or

13 (7) is a past or present member of or  
14 participant in organized crime, as such membership or  
15 participation may be found or determined by the [~~raci~~ng]  
16 commi ssi on.

17 C. [~~No~~] A person [~~shall be~~] is not eligible to  
18 receive or hold [~~any~~] a license to conduct a horse race meet  
19 unless each [~~person~~] individual having [~~any~~] a direct or  
20 indirect interest [~~therein~~] in the meet of any nature  
21 whatsoever, whether financial, administrative, policy-making or  
22 supervisory, is a resident of New Mexico and is individually  
23 licensed under this section. If the applicant for a license is  
24 a corporation, all officers, directors, lenders or holders of  
25 evidence of indebtedness of the corporation and all [~~persons~~]

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1 individuals who participate in any manner in a financial,  
2 administrative, policy-making or supervisory capacity [~~must~~]  
3 shall individually be residents of New Mexico and shall be  
4 licensed under this section. This subsection shall not apply  
5 to [~~any~~] a person owning or holding, directly, indirectly or  
6 beneficially, less than ten percent of the total authorized,  
7 issued and outstanding shares of a corporation [~~which~~] that is  
8 licensed to conduct a horse race meet in this state, unless  
9 [~~such~~] that person has some other direct or indirect financial  
10 interests therein of any nature whatsoever, whether financial,  
11 administrative, policy-making or supervisory.

12 D. The state racing commission may prescribe a  
13 limit to the number of persons directly or indirectly  
14 financially interested in the licensee to conduct a horse race  
15 meet [~~and~~]. The commission shall [~~also~~] determine whether the  
16 financial interests of [~~any~~] an applicant or group of  
17 applicants are compatible with the general welfare of the  
18 inhabitants of this state.

19 E. Without limiting the power of the state racing  
20 commission, pursuant to Subsection D of this section, to limit  
21 the number of persons directly or indirectly interested in  
22 racetracks licensed in this state, no person or group of  
23 persons shall have a direct or indirect interest of any nature  
24 whatsoever, whether financial, administrative, policy-making or  
25 supervisory, in more than two racetracks in this state. For

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1 purposes of this subsection, a person or group of persons shall  
2 not be considered to have a direct or indirect interest in any  
3 racetrack if they own or hold, directly, indirectly or  
4 beneficially, less than ten percent of the total authorized,  
5 issued and outstanding shares of a corporation [~~which~~] that is  
6 licensed to conduct a horse race meet in this state, unless  
7 [~~such~~] the person or group of persons has some other direct or  
8 indirect interest of any nature whatsoever, whether financial,  
9 administrative, policy-making or supervisory, in more than two  
10 licensed [~~tracks. — Any~~] racetracks. A person or group of  
11 persons having a direct or indirect interest in more than two  
12 racetracks shall be immediately ordered by the commission to  
13 divest themselves of such interest. Beginning with the time  
14 the commission gives notice to divest such interest, the  
15 provisions of Subsection H of this section shall apply to such  
16 person or persons.

17 F. [~~Any~~] A corporation holding a license to conduct  
18 a horse race meet in this state shall not issue to [~~any~~] a  
19 person shares of its stock amounting to ten percent or more of  
20 its total authorized, issued and outstanding shares, nor shall  
21 it issue shares [~~which~~] that would, when added to a person's  
22 existing owned or held shares, amount to that person owning or  
23 holding, directly, indirectly or beneficially, ten percent or  
24 more of the total authorized, issued and outstanding shares of  
25 the corporation, unless:

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1 (1) it has given written notice to the state  
2 racing commission, at least sixty days prior to the  
3 contemplated date of [~~such~~] the transfer; and

4 (2) it receives written notice from the  
5 commission of its approval of [~~such~~] the transfer.

6 G. It [~~shall be~~] is the duty of every corporation  
7 holding a license to conduct a horse race meet in this state to  
8 notify, immediately, the state racing commission when it  
9 appears from the stock records of the corporation that a person  
10 not licensed by the commission holds ten percent or more of the  
11 total authorized, issued and outstanding shares of the  
12 corporation.

13 H. [~~Any~~] A person owning or holding, directly,  
14 indirectly or beneficially, ten percent or more of the total  
15 authorized, issued and outstanding shares of a corporation  
16 [~~which~~] that is licensed to conduct a horse race meet in this  
17 state, but who has not been licensed by the state racing  
18 commission to hold [~~such~~] the shares or whose license has been  
19 revoked, shall not directly or indirectly in any manner:

20 (1) exercise [~~any~~] financial, administrative,  
21 policy-making or supervisory power with respect to [~~such~~] the  
22 corporation;

23 (2) be an officer or director of [~~such~~] the  
24 corporation;

25 (3) receive dividends, either in stock or in

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1 cash;

2 (4) hold or receive interest on [~~any~~] a  
3 certificate of indebtedness of [~~such~~] the corporation;

4 (5) exercise, individually or through any  
5 trustee, nominee or agent, any voting right or other power or  
6 privilege conferred by [~~such securities~~] the shares; or

7 (6) otherwise receive [~~any~~] remuneration of  
8 whatsoever kind or nature from the corporation.

9 I. A person who owns or holds, directly, indirectly  
10 or beneficially, ten percent or more of the total authorized,  
11 issued and outstanding shares of [~~the~~] a corporation licensed  
12 to conduct a horse race meet in this state shall be licensed  
13 pursuant to Subsection A of this section. If the state racing  
14 commission finds [~~such~~] the person is not qualified to be  
15 licensed to own or hold, or to continue to own or hold, [~~said~~]  
16 the ten percent interest in [~~such~~] the corporation, [~~it~~] the  
17 commission shall give notice of [~~such~~] that finding to the  
18 corporation and to the person owning or holding [~~such~~] the  
19 interest, and that person shall immediately offer [~~such~~  
20 securities] the shares to [~~such~~] the corporation for purchase.  
21 If the corporation does not elect to purchase [~~said~~] the  
22 shares, [~~then~~] that person may offer the shares to other  
23 purchasers, subject to prior approval of [~~such~~] the purchasers  
24 by the commission pursuant to this section. Beginning from the  
25 time the commission gives the corporation and the shareholder

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1 written notice of disapproval and divestiture, the provisions  
2 of Subsection H of this section shall apply until final  
3 commission approval of the owner or holder of [~~such~~] the shares  
4 is given.

5 J. The state racing commission ~~may~~ at any time  
6 issue a written request to any nominee or trustee holding an  
7 equity interest in a corporation [~~which~~] that is licensed to  
8 conduct a horse race meet in this state for the name, address  
9 and internal revenue service identification number of the real  
10 party in interest owning [~~said~~] the shares. If the nominee or  
11 trustee fails within thirty days from [~~said~~] the request to  
12 furnish the information requested to the commission, the  
13 commission ~~may~~ invoke the divestiture procedures in Subsection  
14 I [~~above~~] of this section.

15 K. Every security [~~hereafter~~] issued by a  
16 corporation [~~which~~] that holds a license shall bear a  
17 statement, on both sides of the certificate evidencing [~~such~~]  
18 the security, of the restrictions and penalties imposed by this  
19 section.

20 L. [~~Any~~] A person violating [~~any provisions~~] a  
21 provision of this section [~~shall be deemed~~] is guilty of a  
22 misdemeanor and upon conviction shall be punished by a fine of  
23 not less than one thousand dollars (\$1,000) and not more than  
24 ten thousand dollars (\$10,000) or by imprisonment in the county  
25 jail for not more than six months or by both such fine and

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1 imprisonment.

2 M The state racing commission shall deny or revoke  
3 a license of a corporation [~~which~~] that is not in compliance  
4 with the provisions of this section.

5 N. For purposes of determining interest in a  
6 racetrack, insofar as [~~such~~] the determination is based on  
7 stock ownership:

8 (1) stock owned, directly or indirectly, by or  
9 for a corporation, partnership, estate or trust shall be  
10 considered as being owned proportionately by its shareholders,  
11 partners or beneficiaries;

12 (2) an individual shall be considered as  
13 owning the stock owned, directly or indirectly, by or for his  
14 family or by or for his partner. For purposes of this  
15 paragraph, the family of an individual includes only his  
16 brothers and sisters, whether by the whole or half blood,  
17 spouse, ancestors and lineal descendants; and

18 (3) stock constructively owned by a person by  
19 reason of the application of Paragraph (1) of this subsection  
20 shall, for the purposes of applying Paragraph (1) or (2) of  
21 this subsection, be treated as actually owned by [~~such~~] that  
22 person, but stock constructively owned by an individual by  
23 reason of the application of Paragraph (2) of this subsection  
24 shall not be treated as owned by him for purposes of again  
25 applying [~~such~~] that paragraph in order to make another the

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1 constructive owner of [~~such~~] the stock.

2 0. As used in this section, "New Mexico resident"  
3 means an individual who:

4 (1) files a personal income tax return  
5 annually with the taxation and revenue department;

6 (2) has resided in New Mexico for one year  
7 prior to being granted a license and will file income taxes for  
8 that year in New Mexico;

9 (3) is currently residing in New Mexico; and

10 (4) maintains his primary residence in New  
11 Mexico during the period in which he is an owner of a racetrack  
12 or is licensed to conduct a horse race meet by the state racing  
13 commi ssi on.

14 P. An individual who was licensed on January 1,  
15 2003 pursuant to this section to conduct a horse race meet and  
16 who is not a New Mexico resident shall not be disqualified from  
17 renewing his license based on his residency. However, an  
18 individual shall not be qualified to be licensed to operate  
19 horse race meets at a location other than the location for  
20 which he was licensed on January 1, 2003, unless the individual  
21 becomes a New Mexico resident."

22 Section 2. EMERGENCY.--It is necessary for the public  
23 peace, health and safety that this act take effect immediately.